



December 20, 2000

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

OR2000-4803

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142506.

The El Paso Police Department (the "department") received three requests for information pertaining to an incident that involved three fatal shootings. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

Initially, we address your contention that the department need not respond to portions of item nos. 5 and 6 of the first request for information. As you correctly point out, the Public Information Act does not require a governmental body to perform legal research for a requestor or to answer general questions. *See* Open Records Decision No. 563 at 8 (1990). However, the Act does require you to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8 (1990). You indicate that "the records provided to [the first requestor] may contain information that answers her questions." We therefore assume that the department has made a good faith effort to make responsive information available.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹This letter ruling assumes that the representative samples of responsive information which you submitted are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that differs substantially from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.101 protects information that is made confidential by other statutes. You claim that the records submitted as Exhibit B contain information that is confidential under section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You inform us that Exhibit B contains address and telephone number information that was supplied to the El Paso County 9-1-1 system by Southwestern Bell. Assuming that El Paso County is included in an emergency communications district that is subject to section 772.318 of the Health and Safety Code, the addresses and telephone numbers of 9-1-1 callers must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318.

You also claim that Exhibits C, D, E, I, K, L, and O contain information that is confidential under section 552.101 in conjunction with section 261.201 of the Family Code. Chapter 261 of the Family Code governs investigations of reported child abuse or neglect. Section 261.201 provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Having carefully reviewed the information that the department claims is confidential under section 261.201, we find that most of the information in question represents files, reports, records, and working papers used or developed in an investigation under chapter 261 of the Family Code. You inform us that the department has no regulations that would allow the release of this information to the public. We therefore conclude that the entire contents of Exhibits C, D, L, and O, two of the items of information that you marked in Exhibit E, the first and last calls on Exhibit I, and the information you marked in

Exhibit K are confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 (1986) (construing predecessor statute). The department must withhold this information from disclosure under section 552.101 of the Government Code.²

You also claim that Exhibit K contains information that is confidential under former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). You represent to us that designated portions of Exhibit K pertain to cases involving juvenile conduct that occurred prior to January 1, 1996. Based on your representation and our review of the information in question, we conclude that this information is confidential under former section 51.14(d) of the Family Code. We also have marked information in Exhibit E that we conclude is confidential under former section 51.14(d). The portions of Exhibit K that you designated and the marked information in Exhibit E also must be withheld from disclosure pursuant to section 552.101 of the Government Code.

You also point out that the submitted records contain social security numbers and other personal information pertaining to police officers. Section 552.117(2) of the Government Code excepts from disclosure the social security number, home address, and home telephone number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, and information that reveals whether a peace officer has family members, regardless of whether the officer has complied with section 552.024 of the Government Code. Section 552.117(2) requires the withholding of this information even if the peace officer in question has retired from the department.

You also note that the submitted records contain other social security numbers. A social security number may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* *See* Open Records Decision No. 622 at 2-4 (1994). We do not believe that the federal law encompasses the social security number of a deceased individual. *See* Open Records Decision No. 272 at 1 (1981) (stating that individual's right of privacy is personal to individual and lapses at death). However, the submitted records contain other social security numbers that may be confidential under section 552.101 in conjunction with the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we

²We note that a parent or other legal representative of a victim of alleged child abuse or neglect may have a right to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

have no basis for concluding that the social security numbers in question were obtained or are maintained pursuant to such a law and are therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, prior to releasing any of the social security numbers in question, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, the submitted records contain motor vehicle record information that is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We do not believe that section 552.130 encompasses a motor vehicle record that pertains exclusively to a deceased individual. *See* ORD 272 at 1.³ However, the submitted records contain other motor vehicle record information, including Texas driver's license, license plate, and vehicle identification numbers, that the department must withhold in accordance with section 552.130.

In summary, Exhibits B, C, D, E, I, K, L, and O contain information that must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code (Exhibit B), section 261.201 of the Family Code (Exhibits C, D, E, I, K, L, and O), and former section 51.14(d) of the Family Code (Exhibits E and K). A peace officer's social security number, home address, or home telephone number must be withheld under section 552.117(2). Other social security numbers

³The same bill that added section 552.130 to chapter 552 of the Government Code also enacted chapter 730 of the Transportation Code. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 1, 1997 Tex. Gen. Laws 4575. The purpose of that legislation was to bring Texas into compliance with the federal Driver's Privacy Protection Act and to protect individual privacy interests by restricting the use of driver's license and motor vehicle information. *See* Senate Comm. on State Affairs, Bill Analysis, S.B. 1069, 75th Leg., R.S. (1997); *see also* Transp. Code § 730.002 (purpose of Motor Vehicle Records Disclosure Act is to protect individual's personal privacy by prohibiting disclosure and use of personal information in motor vehicle records).

contained in the submitted records may be confidential under section 552.101 in conjunction with federal law. Motor vehicle record information must be withheld in accordance with section 552.130. The rest of the submitted information is not excepted from disclosure and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

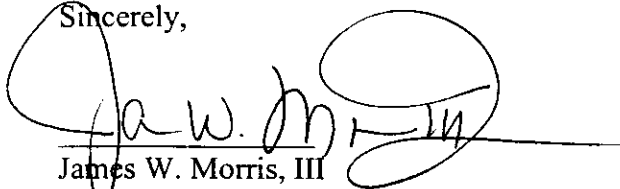
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", is written over a horizontal line. The signature is stylized with large, looping letters.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 142506

Encl: Submitted documents & audio tape

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